

SUBCHAPTER A—GENERAL

PART 1501—GENERAL

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AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8835, Mar. 8, 1984, unless otherwise noted.

1501.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Environmental Protection Agency (EPA) acquisition regulations, referred to as the EPAAR, for the codification and publication of policies and procedures of EPA which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.

This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

[60 FR 38505, July 27, 1995]

1501.103 Applicability.

The FAR and the EPAAR apply to all acquisitions as defined in part 2 of the FAR, except where expressly excluded.

1501.104 Issuance.

1501.104-1 Publication and code arrangement.

The EPAAR will be published in: (a) The FEDERAL REGISTER, (b) cumulated form in the Code of Federal Regulations (CFR), and (c) a separate loose-leaf form in a distinctive light blue color.

1501.104-2 Arrangement of regulations.

(a) *References and citations.* This regulation may be referred to as the Environmental Protection Agency Acquisition Regulation or the EPAAR. References to EPAAR materials shall be made in a manner similar to that prescribed by FAR 1.104-2(c).

1501.104-3 Copies.

Copies of the EPAAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of loose-leaf EPAAR are distributed within EPA and may be obtained from the EPA Facilities and Support Services Division.

Subpart 1503.3—Agency Acquisition Regulations

1501.301 Policy.

The EPAAR is prescribed by the Director, Office of Acquisition Management.

[49 FR 8835, Mar. 8, 1984, as amended at 59 FR 18976, Apr. 21, 1994]

§ 1501.370 OMB approvals under the Paperwork Reduction Act.

The information collection activities contained in the EPAAR sections listed below have been approved by the Office of Management and Budget (OMB) and have been issued OMB numbers in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

48 CFR citation	OMB control No.
Specification, Standards and other Purchase Descriptions	
1510.011–70 through 1510.011–72	2030–0005
1510.011–80 through 1510.011–81	2030–0023
Contract delivery or performance 1512.104	2030–0023
Small Purchase and Other Simplified Purchase Procedures	
1513.505 through 1513.570	2030–0007
Contract Financing	
1532.170(a)	2030–0016
Solicitation Provisions and Contract Clauses	
1552.209–71	2030–0023
1552.209–73 through 1552.209–74	2030–0023
1552.210–72	2030–0005
1552.210–80	2030–0023
1552.212–71	2030–0023
1552.215–72 through 1552.215–76	2030–0006
1552.227–76	2030–0023

[59 FR 18619, Apr. 19, 1994, as amended at 59 FR 32134, June 22, 1994; 61 FR 29316, June 10, 1996]

Subpart 1501.4—Deviations

1501.401 Definition.

A deviation to the EPAAR is defined in the same manner as a deviation to the FAR (see FAR 1.401).

[49 FR 8835, Mar. 9, 1984; 49 FR 24734, June 15, 1984]

1501.403 Individual deviations.

Requests for individual deviations from the FAR and the EPAAR shall be submitted to the Head of the Contracting Activity (HCA) for approval. Re-

quests submitted shall cite the specific part of the FAR or EPAAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The HCA shall transmit copies of approved individual FAR deviations to the FAR Secretariat.

Subpart 1501.6—Contracting Authority and Responsibilities

1501.602–3 Ratification of unauthorized commitments.

(a) *Definition.* *Unauthorized commitment*, as used in this subpart, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. The term does not relate to the Agency process for the reservation of funds.

(b) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are;

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changed the terms and conditions of the contract.

(c) *Ratification approvals and concurrences.* (1) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official.

(3) All proposed ratification actions of \$250,000 or more for which the Chief of the Contracting Office is not the ratifying official shall be forwarded for review to the responsible PCMD Associate Director prior to approval by the ratifying official.

(d) *Procedures.* (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for small purchases exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the action. The appropriation data cited on the 1900-8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

(e) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602-3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) If the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(f) *Payment of Properly Ratified Claims.* After the unauthorized commitment is ratified, the Contractor must submit an invoice (or resubmit an invoice if one was previously submitted) citing

1501.603-1

the appropriate contract or purchase order number.

[55 FR 18340, May 2, 1990, as amended at 59 FR 18976, Apr. 21, 1994; 60 FR 38505, July 27, 1995]

1501.603 Selection, appointment, and termination of appointment.

1501.603-1 General.

EPA Contracting Officers shall be selected and appointed and their appointments terminated in accordance with the Contracting Officer warrant program specified in chapter 8 of the EPA "Contracts Management Manual."

PART 1502—DEFINITION OF WORDS AND TERMS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1502.1—Definitions

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati.

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Legal Counsel means those attorneys assigned to the Contracts Law Branch and the Research Triangle Park General Counsel Branch, Office of the General Counsel and designated by the Assistant General Counsel as Contract Law Specialists.

Procurement Executive (PE) means the Director, Office of Acquisition Management.

[59 FR 18977, Apr. 21, 1994]

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PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

1503.000 Scope of part.

Subpart 1503.1—Safeguards

1503.101 Standards of conduct.

1503.103 Independent pricing.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Other Improper Business Practices [Reserved]

Subpart 1503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

1503.600-71 Definitions.

1503.601 Policy.

1503.602 Exceptions.

1503.670 Solicitation disclosure provision.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8837, Mar. 8, 1984, unless otherwise noted.

1503.000 Scope of part.

This part implements FAR part 3, cites EPA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Environmental Protection Agency

1503.670

Subpart 1503.1—Safeguards

1503.101 Standards of conduct.

1503.103 Independent pricing.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Other Improper Business Practices [Reserved]

Subpart 1503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of Government.

1503.600-71 Definitions.

(a) *Regular employee* means any officer or employee of EPA who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, including regular officers of the Public Health Service Commissioned Corps and reserve officers of the Public Health Service Commissioned Corps while on active duty.

(b) *Special employee* means an officer or employee of EPA who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more

than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

1503.601 Policy.

(a) No contract may be awarded without competition to a former regular or special EPA employee (or to a business concern or other organization owned or substantially owned or controlled by a former employee) whose employment terminated within 365 calendar days before submission of a proposal to EPA.

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exists:

(1) The current or former EPA regular or special employee is or was involved in development or negotiating the proposal for the prospective contractor.

(2) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

1503.602 Exceptions.

The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

[60 FR 38505, July 27, 1995]

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203-70, Current/Former Agency Employee Involvement

1504.804-5

Certification, in all solicitations for sole source acquisitions.

[50 FR 14357, Apr. 11, 1985]

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.8—Contract Files

Sec.

1504.804 Closeout of contract files.

1504.804-5 Detailed procedures for closing out contract files.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 28246, July 11, 1984, unless otherwise noted.

Subpart 1504.8—Contract Files

1504.804 Closeout of contract files.

1504.804-5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804-5, the contracting

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office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the cost advisory group at the contracting office in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination settlement proposals shall be submitted to the cost advisory group at the contracting office for review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick close-out procedures as described in 1542.708 and Unit 2 of the EPA Acquisition Handbook.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1505—PUBLICIZING CONTRACT ACTIONS

Sec.

1505.000 Scope of part.

Subpart 1505.2—Synopsis of Proposed Contract Actions

1505.202 Exceptions.

1505.203 Publicizing and response time.

1505.271 [Reserved].

Subpart 1505.4—Release of Information

1505.405 Exchange of acquisition information.

Subpart 1505.5—Paid Advertisement [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8838, Mar. 8, 1984, unless otherwise noted.

1505.000 Scope of part.

This part provides instructions on publicizing contract opportunities and response time, instructions on information to include in the synopses of proposed contracts, instructions on publicizing orders under GSA schedule contracts, policy references relative to release of information, and procedures for obtaining information on previous Government contracts.

[50 FR 14357, Apr. 11, 1985]

Subpart 1505.2—Synopsis of Proposed Contract Actions

1505.202 Exceptions.

The Contracting Officer need not submit the notice required by FAR 5.201 when the Contracting Officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

[60 FR 38505, July 27, 1995]

1505.203 Publicizing and response time.

(a) The Contracting Officer may, at his/her discretion under certain circumstances, elect to transmit a synopsis to the Commerce Business Daily (CBD) of a proposed contract action that falls within an exception to the synopsis requirement in FAR 5.202(a). For those contract actions, the Contracting Officer may provide for a lesser time period than the 15 days required by FAR 5.203(a) and the 30 days required by FAR 5.203(b) or (c), and the 45 days required by FAR 5.203(d). The Contracting Officer must identify the basis for the lesser time periods for response in the synopsis.

(b) The authority for paragraph (a) does not extend to the synopsis of contract actions falling within the exception in FAR 5.202(a)(7), if to do so would disclose the originality of thought or innovativeness of the proposed research.

[50 FR 14357, Apr. 11, 1985]

1505.271 [Reserved]

Subpart 1505.4—Release of Information

1505.405 Exchange of acquisition information.

Contracting Officers shall insert the solicitation provision at 1552.214–70 and 1552.215–72, Past Performance, to obtain information on previous Government contracts or subcontracts.

Subpart 1505.5—Paid Advertisement [Reserved]

PART 1506—COMPETITION REQUIREMENTS

Sec.

1506.000 Scope of part.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302-5 Authorized or required by statute.
1506.303-2 Content.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14357, Apr. 11, 1985, unless otherwise noted.

1506.000 Scope of part.

This part implements FAR part 6. It prescribes the Environmental Protection Agency policies and procedures in obtaining full and open competition in the acquisition process.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302-5 Authorized or required by statute.

(a) *Authority.* Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

[53 FR 31872, Aug. 22, 1988]

1506.303-2 Content.

The documentation requirements in this section apply only to acquisitions processed using other than small purchase procedures. (Refer to 1513.170 for documentation for small purchase acquisitions).

(a) The initiating office shall prepare a written justification for other than full and open competition (JOFOC) that documents the facts and circumstances substantiating the infeasibility of full and open competition for each recommended limited sources or sole source acquisition when required by FAR 6.302.

(b) The recommendation shall be entitled "Justification for Other Than Full and Open Competition" and shall be signed at the programmatic Division Director or comparable office level prior to submission with the procurement request. The JOFOC shall contain the information prescribed in FAR 6.303-2 (a) and (b).

(c) If unusual and compelling urgency (see FAR 6.303-2) is a basis for the JOFOC, then the following applies. Explain the circumstances that led to the need for an urgent contractual action. Explain why the requirement could not have been processed in sufficient time to permit full and open competition. It should be noted that the existence of legislation, court order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(d) If the proposed acquisition has been synopsisized in accordance with the applicable requirements in FAR subpart 5.2, the Contracting Officer must incorporate the evaluation of responses to the synopsis in the JOFOC. (See 1506.371(d) for contents of the evaluation document).

[50 FR 14357, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985]

PART 1508—REQUIRED SOURCES OF SUPPLY

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Environmental Protection Agency

1509.170-4

Subpart 1508.8—Acquisition of Printing and Related Supplies

1508.870 Contract clause.

Contracting Officers shall insert the contract clause at 1552.208-70, Printing, in all contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

[49 FR 8838, Mar. 8, 1984]

PART 1509—CONTRACTOR QUALIFICATIONS

Sec.

1509.000 Scope of part.

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.

Subpart 1509.170—Contractor Performance Evaluations

1509.170-1 Scope of subpart.

1509.170-2 Applicability.

1509.170-3 Purpose.

1509.170-4 Procedures.

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.

1509.404 Consolidated list of debarred, suspended, and ineligible contractors.

1509.406 Debarment.

1509.406-3 Procedures.

1509.407 Suspension.

1509.407-3 Procedures.

Subpart 1509.5—Organizational Conflicts of Interest

1509.500 Scope of subpart.

1509.502 Applicability.

1509.503 Waiver.

1509.505-4 Obtaining access to proprietary information.

1509.505-70 Information sources.

1509.507-1 Solicitation provisions.

1509.507-2 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8839, Mar. 8, 1984, unless otherwise noted.

1509.000 Scope of part.

This part implements FAR part 9 and provides policy and procedures pertaining to contractor's responsibility; debarment, suspension, and ineligibility; and organizational conflicts of interest.

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.

Subpart 1509.170—Contractor Performance Evaluations

1509.170-1 Scope of subpart.

This subpart establishes EPA policy and procedures for evaluation of contractor performance.

1509.170-2 Applicability.

The provisions of this subpart apply to: (a) All contracts for research and development and for services other than management consulting services when the contract amount is \$25,000 and above, and (b) all contracts for management consulting services, without regard to dollar value. FAR 36.201 and 36.604 provide detailed instructions for conduct of construction and architect-engineering Contractor performance evaluation.

1509.170-3 Purpose.

The purpose of this subpart is to: (a) Provide an orderly and uniform method of determining and recording the effectiveness of contractors in meeting contractual obligations; (b) emphasize to contractors the importance of satisfying contractual obligations; (c) create within the EPA a record of contractor performance and a means for considering this record in future acquisition actions; and (d) provide a system for identifying contractors with a history of poor performance.

1509.170-4 Procedures.

(a) *Use and preparation of forms.* EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance, shall be prepared at the completion of the technical effort of

the contract or purchase order to record the effectiveness of contractors in meeting contractual obligations. Forms shall be prepared in accordance with the instructions printed on the back of each form.

(b) *Responsibilities for preparation of forms.*

(1) The Policy Training and, Oversight Division (PTOD), Office of Acquisition Management, 3802F shall originate EPA Form 1900–26 and EPA Form 1900–27 within two weeks after the completion of the technical effort of the contract or purchase order.

(2) The Contracting Officer administering the contract shall prepare the business evaluation on EPA Form 1900–26; forward the original of the form to the Quality Assurance Branch, Office of Management 3802F, Washington, DC 20460; and retain a copy in the contract file.

(3) The Project Officer with technical responsibility for the contract shall prepare the technical evaluation on EPA Form 1900–27; forward the form to the Quality Assurance Branch, Office of Acquisition Management, 3802F, Washington, DC 20460; and forward a copy to the Contracting Officer for insertion in the contract file.

(c) *Unsatisfactory performance ratings.* The Contracting Officer shall apprise the Contractor of any overall rating of “unsatisfactory.” If the Contractor submits comments in response to such a rating, the evaluator shall include the comments as an attachment to the evaluation form. Evaluators shall make appropriate changes to the performance evaluations if any are warranted by the Contractor’s comments.

(d) *Review of evaluations.* The Quality Assurance Branch, Office of Acquisition Management, shall review each evaluation as it is received, and compare it with recent evaluations submitted for the same Contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the appropriate Contracting Officer for his/her possible action, which may include referral of the matter in accordance with 1509.406–3(a)(1).

(e) *Filing of forms.* Evaluation forms shall be filed in the Contractor performance evaluation files maintained

by the Quality Assurance, Office of Acquisition Management.

(f) *Release of ratings.* Information on Contractors’ performance ratings may be obtained by contacting the Quality Assurance Branch, Office of Acquisition Management. Contractors’ performance ratings determined by the Contracting Officer and the Project Officer may be released to other Government agencies at their specific written request, and on condition that the information will not be made available outside of the Government. Requests for information on the ratings from individuals or entities outside of the Government shall be processed in accordance with the Freedom of Information Act and 40 CFR part 2.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 59 FR 18976, Apr. 21, 1994]

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.

The Director, Grants Administration Division, is designated the “debarment official” and the “suspending official” as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1(b), 9.405–2, 9.406–1(c), and 9.407–1(d).

1509.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Grants Administration Division (or designee) is responsible for notifying GSA in accordance with FAR 9.404(c).

1509.406 Debarment.

1509.406–3 Procedures.

(a) *Investigation and referral—(1) Contracting Officer responsibility.* (i) When contracting personnel discover information which indicates that a cause for debarment or suspension may exist, they shall promptly report such information by memorandum to the cognizant Chief of the Contracting Office. Purchasing agents in the small purchase activities which do not come under the cognizance of the Headquarters, Research Triangle Park

(RTP), or Cincinnati contracting offices shall report such information by memorandum directly to the Head of the Contracting Activity (HCA).

(ii) Contracting Officers shall review the GSA consolidated list to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontract with listed contractors.

(2) *Chief of the Contracting Office responsibility.* When the Chief of the Contracting Office determines that sufficient information exists to support the reasonable belief that a cause for debarment or suspension may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum to the HCA may be a cover memorandum which forwards the Contracting Officer's memorandum and provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility.* Upon receipt of a report of a suspected debarment or suspension situation, the HCA or the designee shall take the following actions:

(i) Notify the Debarring Official that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information. Request investigative support from the EPA Inspector General when appropriate.

(iv) Refer the matter to the Debarring Official for consideration of debarment; or recommend to the Debarring Official that the matter be closed without further action because the facts do not constitute a cause for debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to voluntarily exclude itself from participation in Government contracting/sub-

contracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Debarring Official's responsibility.* The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

1509.407 Suspension.

1509.407-3 Procedures.

The procedures prescribed in 1509.406-3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

This subpart establishes EPA policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. EPA's policy is to avoid, neutralize, or mitigate organizational conflicts of interest. If EPA is unable to neutralize or mitigate the effects of a potential conflict of interest, EPA will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1509.502 Applicability.

This subpart applies to all EPA contracts except agreements with other Federal agencies. However, this subpart applies to contracts with the

Small Business Administration (SBA) under the 8(a) program.

1509.503 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in accordance with FAR 9.503. The Assistant General Counsel for Contracts and Information Law shall be consulted on such waiver requests.

[49 FR 8839, Mar. 8, 1984, as amended at 61 FR 29316, June 10, 1996]

1509.505-4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and the provisions of their contracts relating to the treatment of confidential business information.

1509.505-70 Information sources.

(a) *Disclosure.* Prospective EPA Contractors responding to solicitations or submitting unsolicited proposals shall provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraph (a) (1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, it may so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be

eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, EPA will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* Where the Contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

[49 FR 8839, Mar. 8, 1994. Redesignated at 59 FR 18619, Apr. 19, 1994]

1509.507-1 Solicitation provisions.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in (FAR) 48 CFR 9.507-1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* Except in solicitations where the Organizational Conflict of Interest provision is geared toward the particular acquisition (see 1509.507-1(a)(1)), the Contracting Officer shall include in all solicitations the provisions at 1552.209-70 and 1552.209-72. The provision is optional in solicitations for small purchases.

[49 FR 8839, Mar. 8, 1994. Redesignated and amended at 59 FR 18619, Apr. 19, 1994]

1509.507-2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209-71 in all contracts in excess of the small purchase limitation and, as appropriate, in small purchases. Contracts for other